

Rozum Jan, Jarkovská Lucie, Kotulan Petr:

Research of conditional release institute¹

2002 – 2003

ISBN 80-7338-026-9

Extended summary

Release from prison is a test of how effective prison methods of treatment have been, what capabilities and possibilities the probation service has, how society is willing and able to accept its obligation to contribute towards reforming offenders, and finally also a test of the offender's adaptability. Release from prison is of considerable importance for society, for the prisoner and his/her family, and for the whole process of reform programmes in prison and in freedom. We directed the research into the mechanism of conditional release (completed in the Institute for Criminology and Social Prevention in December 2003) to one of the forms of parole, conditional (ie provisional not definitive) release. Conditional release is defined as a complex of non-institutional professionally performed reform programmes for offenders with the aim of ensuring their complete rehabilitation and social re-adaptation.

The subject of the research was examination of the mechanism of conditional release, which is regulated in the provisions of §§ 61- 64 of the Criminal Code and the procedure for its execution pursuant to the provisions of §§ 331 - 333 of the Criminal Procedure Code. The subject of the research was in particular the actual procedure of the entities involved in application of this criminal law provision. We focused attention in particular on the execution of conditional release with supervision and to how supervision is performed and how the particular entities involved work together in the execution of conditional release with supervision.

We directed the research in particular to:

- analysis of domestic and international legal regulations
- analysis of statistical data
- analysis of court decisions on conditional release, ie analysis of those cases when supervision was imposed by the court, and then to evaluation of documents from probation records on those conditionally released with supervision
- the activities of Prison Service staff in preparing prisoners for conditional release and the activity in making a decision for release; in particular how improvement in the behaviour of a prisoner is assessed, and the meeting of obligations in the assessment report for the court which makes the decision on conditional release
- activities of probation officers in selection and preparation of prisoners for conditional release, then in checking the appropriate restrictions and obligations and also how supervision is performed by probation officers where this is stipulated by the court and how the probation programme is implemented
- analysis of the opinions of prisoners upon whom supervision while on conditional release has been imposed

The aim of research into the mechanism of conditional release (with emphasis on those cases where supervision has been ordered) should be to ascertain how it contributes on the

¹ Rozum, J., Jarkovská, L., Kotulan, P. Institut dohledu u podmíněného propuštění. Praha : IKSP, 2004. 290 stran.

one hand to reducing the prison population and on the other hand to resocialisation of offenders. We looked at the importance of conditional release for society and for offenders and then the activities of the particular organisations which perform tasks in specific phases of conditional release, particularly the activities of the Probation and Mediation Service. The aim of the research was not to be only acquiring knowledge of the current legislation and the practical situation but also formulating views on what situation is desirable and optimal. We described the findings obtained, evaluated them and drew attention to possible more suitable procedures in applying these mechanisms, then we formulated suggestions which should contribute to more effective functioning of the mechanism examined.

The following methods, techniques and procedures were followed in the research:

- a) study of documents from abroad on this issue, particularly legal regulations and experience in applying conditional release (the term parole is used in other countries) in practice
 - b) analysis of domestic legal regulations (including their historical development) study of other written sources (particularly Czech professional sources) and study and analysis of court files and documents from probation records; this analysis was directed in particular to court decisions on conditional release with supervision, to analysis of assessment of the prisoner by the Prison Service, to the execution of supervision and to analysis of probation reports before the court decision on conditional release, and probation reports on the progress of supervision (court decisions on conditional release with supervision in the period from 1 January to 30 June 2002 were analysed (a total of 167 court files). From the court files 13 PMS reports before the court decision and 16 PMS reports on the progress of supervision were appraised
- a questionnaire was sent to experts (judges who issue decisions on conditional release, social workers, the Prison Service and probation officers)
- interviews with experts and prisoners
- analysis of statistical data from 1998 to 2003 from Ministry of Justice and Prison Service statistical data
- specialist studies by the Prison Service staff, the Probation and Mediation Service and social curators.

The final research report has a theoretical section, which contains the following chapters: introduction to the issue of the mechanism of conditional release, the legal provisions for conditional release in selected countries and the development of legal provisions for conditional release from serving a prison sentence. The second part of the research report gives findings from practice: the respective statistical data and findings from court records and court decisions. The results of the questionnaire given to experts forms an important part of the research.

We also devoted attention to the activities of probation officers in implementing the mechanism of conditional release (we analysed on the one hand their activities before a court decision on conditional release and on the other hand in performing supervision of conditionally released prisoners). The principal results of the research are summarised in the final part of the study and suggestions for their use are then formulated.

Summary of conclusions:

Statistical data

- From the statistical data provided by the Czech Prison Service for the years 1998 -2003 it can be seen that from 1998 to 2002 there is a clear year-on-year growth in prisoners conditionally released (1998 - 3126, 1999 - 3299, 2000 - 3989, 2001 - 4264, 2002 - 4349). In 2003, there was a significant drop in the number of prisoners conditionally released to 3140. Since 2002, a court has been able to stipulate supervision of conditionally released prisoners. In 2002, supervision was imposed on 668 prisoners, which represents 15.3 % of the total number of those conditionally released in 2002. In 2003, courts imposed supervision for the conditional release of 531 prisoners, which amounts to 16.9 % of the total number of those conditionally released in 2003. Even though the total number of prisoners conditionally released went down in 2003, the percentage of those conditionally released with supervision did not, but rose very slightly.

Number of conditionally released prisoners from 1998 to 2003

Year	Adults		Juveniles		TOTAL	With supervision
	men	women	men	women		
1998	2955	81	89	1	3126	-----
1999	3095	113	89	2	3299	-----
2000	3793	125	71	0	3989	-----
2001	4007	190	66	1	4264	-----
2002	4110	178	60	1	4349	668
2003	2965	139	36	0	3140	531

source : Prison Service HQ

Summary of findings from court records on application of the mechanism of conditional release from serving a prison sentence

From analysis of 167 court conditional release records and from 26 separate resolutions of district courts, where a legal decision has been issued on conditional release from serving a prison sentence with supervision, the following **principal findings** emerge:

- The new provision for conditional release from serving a prison sentence with supervision, which was introduced in our criminal law in an amendment effective from 1.1.2002, was adopted in practice and applied in suitable cases from the start. The possibility of stipulating supervision extended the number of those conditionally released from serving their sentence to prisoners for whom conditional release would be problematic or came into consideration after a longer period of the imposed sentence had been served.
- The initiative for starting proceedings on conditional release from serving a prison sentence is predominantly applications by prisoners.
- For all prisoners, assessment of their behaviour while serving their prison sentence was entered in the records and prepared by specialist committees of the Czech Prison Service, and in spite of differences in content and quality it contained sufficient information for the court to make a decision.

- The length of the probation period was set mostly in the middle of the legal limits, proportionate to the length of the sentence remitted, while taking account of other decisive aspects for setting its length.
- Courts utilised the option in suitable cases of imposing the appropriate restrictions and the appropriate obligations stated in § 26 para. 4 of the Criminal Code, but less the option of ordering convicted person to pay compensation to the best of their ability for damage/loss which they had demonstrably caused by their offences.
- The appropriate Probation and Mediation Service centre was always given the task of monitoring performance of the supervision stipulated in conditional release.
- Most of the sample monitored were younger people who had worked in manual professions or had been unemployed before they started serving their sentence. In the sample of persons conditionally released only two were women, one a juvenile and two foreign nationals.

Summary of the findings obtained from the professional questionnaire given to judges, probation officers and Prison Service social workers

The respondents to our questionnaire were judges, Prison Service social workers and probation officers. We contacted Prison Service social workers at a training course attended by 51 staff. A total of 116 social workers are operating in 32 Czech prisons, which means that 44% of all Prison Service social workers were polled. The Prison Service social workers we polled represented all Czech prisons.

The questionnaire was given to those judges who issue decisions on conditional release in 32 district courts in the Czech Republic. According to data from the Prison Service, a total of 55 judges issue decisions on conditional release. These judges were approached with requests to complete the questionnaires. A total of 43 judges, ie 78 % of judges who issue decisions on conditional release, responded to the questionnaire.

We gave the questionnaire to probation officers at all Probation and Mediation Service centres (a total of 76 PMS centres). In view of the fact that the PMS centres in Prague, Brno and Plzeň perform and fulfil tasks for district or circuit courts operating in these cities (a total of 15 courts), a total of 86 questionnaires were distributed for probation officers. Of these 86 questionnaires, 35 were in extended form for those PMS centres in whose area of operation there is a prison (even though there are 32 prisons; 3 and 2 questionnaires respectively were sent to the PMS centres in Plzeň and Brno). The return rate of questionnaires from PMS where there is no prison was 88 % - 51 questionnaires were sent out and 45 returned. The return rate of questionnaires from PMS where there is a prison was 68 % - 35 questionnaires were sent out and 24 returned. So of 86 questionnaires sent out a total of 69 were returned by PMS, ie 80%.

The questionnaire provided the following principal **findings** :

Participation of non-governmental organisations in fulfilling the purpose of the sentence

- The Prison Service social workers considered the churches to be the most active non-governmental organisations assisting in fulfilling the purpose of the sentence. The involvement of the churches in work with former or current prisoners is the most extensive and also the most beneficial from the point of view of social workers. However, the converse is true of evaluation of civic associations, and the activities they have carried

out in prisons are assessed most negatively by respondents, which may be caused also by the fact that the scope of civic associations' activities in prisons is also the smallest.

- For non-governmental organisations and civic associations, Prison Service social workers most frequently stressed as beneficial their material assistance to prisoners or those conditionally released and their active participation in arranging lectures and discussion sessions (for instance, for drug addicts) and in organising concerts and other cultural performances.

Court decisions on conditional release

- According to judges, the most important information for issuing decisions on conditional release is the type of criminal activity and the criminal record of the person convicted, the Prison Service report and information on the social background of the person convicted.
- Judges rather incline to the view that the mechanism of supervision is helpful in issuing decisions, in cases when earlier, without the option of imposing supervision, they would have refused conditional release.

The issue of appropriate restrictions and obligations

- Probation officers evaluated conditions for enforcing appropriate restrictions and obligations in the area of their centre. The conditions for treatment of drug addiction which is not protective treatment were given the best evaluation, even though it has to be stated that these conditions are evaluated as average on the scale. Conditions for fulfilling social training programmes were given the worst evaluation.

Supervision benefits

- Among judges and Prison Service social workers there is a clearly prevailing positive view on the introduction of the possibility of imposing supervision with conditional release. Probation officers also see the mechanism of supervision as a definitely effective tool of criminal policy. Among judges the prevailing view is that conditional release with supervision is a more severe measure for a convicted person, but Prison Service social workers on the other hand and probation officers in particular evaluate conditional release with supervision as a measure that is more convenient for the convicted person.
- Negative elements in the introduction of supervision are seen by Prison Service social workers and judges in the activities of the PMS in its practical application of it (formal supervision, few probation officers).

Performance of supervision by the Probation and Mediation Service

- According to statements made by probation officers, the problems they most frequently have to deal with in meetings with prisoners concern compensation for damage/loss, gaining employment, financial problems and the reasons why the criminal act was committed. Probation officers said that the least common problems they encounter are health and problems with partners.

Obstacles to the resocialisation of the conditionally released

- Based on their experience, probation officers stated what in their opinion are the greatest obstacles to resocialisation of the conditionally released. Their answers can be summarised under the six most frequently mentioned problem areas :
 - impossibility of finding employment – unemployment of convicted persons
 - return to a bad environment and recidivism
 - unwillingness to change lifestyle, and lack of motivation for resocialisation
 - loss of home and family and social background

- non-existence of social and resocialisation programmes and lack of institutions working together on these
- financial problems – money owed for the costs of serving a sentence, money owed for the costs of criminal proceedings, inability to pay compensation to the injured party.

Activities of probation officers in implementing the mechanism of conditional release based on analysis of probation reports before issue of a court decision and in the course of supervision

- From a total number of 167 court files in which the court issued a decision on conditional release with supervision in the period from 1.1. 2002 to 30.6. 2002 we recorded the actions of the Probation and Mediation Service in the stage before the court issued a decision, in 13 cases. In all cases the Probation Service provided a certain „background document“ for the requirements of the court in issuing a decision on conditional release. This had the following form - report (in 8 cases), viewpoint, statement of the Probation Service or information on making contact with the PMS.
- The reports analysed had a very similar content structure. Every report contained information on:
 - how cooperation with the client had proceeded
 - the client's current life situation (with emphasis on family situation and the possibility of employment)
 - the client's previous criminal record
- Every report contained a summary opinion of the PMS on the client's application for conditional release, with emphasis on the Probation and Mediation Service's opinion on possible imposition of supervision or stipulation of appropriate restrictions and obligations. In our opinion the reports analysed provided valuable information for the court's decision on conditional release, particularly when the court considered imposition of supervision or stipulation of appropriate restrictions and obligations.
- The conditionally released have a big problem finding employment. They are often uneducated and have no skills, and also have a record in the criminal register. They often lack self-motivation and the will to work.
- Most of the PMS clients under supervision in our sample return from serving their sentences with debts which they are obliged to repay to the best of their ability during their probation period. Three clients had other appropriate obligations in addition to compensation for damage/loss and payment of the costs of criminal proceedings and serving a prison sentence. Two had to abstain from excessive use of alcoholic beverages and one had the obligation imposed on him to abstain from use of addictive substances.
- The reports on the progress of supervision contained appendices documenting the client's situation and meeting the supervision conditions. Most frequently copies of documents concerning payment of debts were appended – maintenance, costs of serving prison sentences and criminal proceedings, copies of employment contracts, proof of Employment Office registration, records of individual consultations and the probation supervision plan.

Suggestions for use of the research results

- **To incorporate a legal regulation in the provisions of § 333 para. 3 of the Criminal Procedure Code whereby in the case of a decision pursuant to § 331 para. 3 of the Criminal Procedure Code an appeal can also be lodged against a decision imposing supervision.**

Under the given provisions authorised persons may, in cases when a decision has been issued pursuant to § 331 para. 3 of the Criminal Procedure Code on conditional release from serving a prison sentence, lodge an appeal only against the decision stipulating the length of the probation period. In our view this provision does not take into account the newly created mechanism of supervision. Conditional release from serving a prison sentence is conceptually linked to stipulation and the duration of the probation period. This is, however, a separate mechanism, whose substance, purpose and obligations arising from its enforcement are regulated by the provisions of § 26a and § 26b of the Criminal Code, and the third sentence of § 63 para. 1 of the Criminal Code refers to its use.

- **Legal regulations should provide for flexible supervision, ie the possibility of imposing supervision at any time during the probation period of a person conditionally released or revoking the stipulated supervision before the end of the probation period.**

In the questionnaire we asked the respondents for their opinion on the use of findings from abroad on legal provisions for conditional release. The respondents were agreed in taking a most favourable view of what is termed Flexible Supervision as a suggestion for legislation, ie the option of the court to revoke the stipulated supervision at any time during the probation period set for conditional release from serving a prison sentence or to stipulate it if it had not been imposed.

Probation officers, who have the most experience in the actual performance of supervision, often stated in questionnaires that coincidence of the probation period with the performance of supervision is unsuitable for a number of prisoners and is unnecessary, particularly in cases when a long probation period has been set. They stated that supervision performed over a long period gradually becomes formal and, if it exceeds the time required for intensive therapy, makes it impossible for the conditionally released person to lead a normal life. There is no possibility of fitting the length of performing supervision to the specific situation and the needs of the client, and there is no possibility of reacting flexibly to his/her stabilised situation. Nor is the possibility of imposing supervision during the stipulated supervision period an unknown alternative in our criminal legislation. So, for example, under the provisions of § 60 para. 1(a) of the Criminal Code a court may in view of the circumstances of the case and the person of the prisoner in exceptional cases allow the prisoner to remain on conditional release, even if he/she has given cause for ordering service of the sentence, and to stipulate supervision of the prisoner.

- **To consider the possibility of compiling a list of organisations providing additional social assistance services for the requirements of the court in issuing decisions on appropriate restrictions and obligations under the provisions of § 26 of the Criminal Code.**

To consider also accreditation of organisations providing these services.

Implementation and development of probation supervision and appropriate restrictions and obligations require close cooperation with the other organisations working in the area of social prevention and psychosocial services. The Probation and Mediation Service should ensure systematic joint action and joint implementation of individual programmes. It can be seen from the questionnaire that 87 % of judges do not, when issuing a decision on imposing appropriate restrictions and obligations, have a summary of facilities available in which these restrictions and obligations can be performed. We think it would be useful to map the

situation in the Czech Republic and create for the internal requirements of courts and the Probation and Mediation Service a list of organisations and institutions where appropriate obligations can be performed. This list should be created by the Probation and Mediation Service according to its experience in practice. The specific method of meeting obligations and restrictions is not regulated in detail. Accreditation of facilities providing additional social services should enable quality performance of the imposed obligations. The court would have a certain guarantee that performance of obligations will not be formal and will be performed at a specialist and professional level. It can also be seen from the questionnaire that judges and probation officers would clearly welcome accreditation of facilities. Accreditation would be effected either by the Ministry of Justice or the Ministry of Labour and Social Affairs.

- **With development of the Probation and Mediation Service, specialisation of probation officers in performance of supervision for conditionally released prisoners and specialisation of probation officers in cooperation with the Prison Service should be envisaged.**

We recommend that after the personnel situation becomes stable in the Probation and Mediation Service, the probation officers in individual centres specialise in performing supervision of conditionally released prisoners.

The option of imposing supervision (since 1.1.2002) of conditional release has brought expansion of the work of probation officers, but also the need for more intensive cooperation between the courts, the Czech Prison Service and the Czech Probation and Mediation Service. A methodological instruction was issued, the aim of which is to ensure mutual links between the work of Czech Prison Service staff and Czech Probation and Mediation Service staff in the area of preparing background documentation for the possibility of conditional release of a convicted person from serving a prison sentence with concurrent imposition of supervision. The methodological instruction contains a description of the procedure for joint action and cooperation between the Prison Service and the PMS before submission of an application for conditional release, from submission of an application for conditional release and after a final decision of the court on conditional release with supervision.

The attention of both cooperating organisations should be directed to preparing quality background documentation before issue of a decision on conditional release and also to enabling the released person to return to the best conditions possible. One of the results of cooperation between the Prison Service and the Probation and Mediation Service is in the ideal case an opinion on the application for conditional release. It can be presumed that there will be great interest on the part of prisoners in contacting the Probation and Mediation Service. In practice this will lead to a huge workload for probation officers working in PMS centres in areas with prisons.